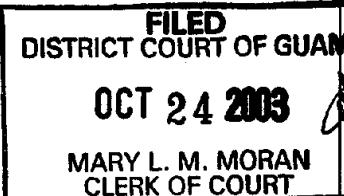


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(83)

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

8 Tony H. Ashtiani,)
9 Plaintiff,) Civil Case No.: 02-00032
10 Vs.)
11 Continental Micronesia Inc,)
12 Dba, Continental Micronesia,) REPLY MEMORANDUM OF POINTS AND
13 Continental Airlines,) AUTHORITIES IN SUPPORT OF
14 Defendant.) MOTION FOR ORDER COMPELING
15) DISCOVERY
16)
17)
18)
19)
20)
21 Plaintiff Tony H. Ashtiani pro se, hereby files this Reply
22 Memorandum in support of his Motion for Order Compelling
23 Discovery.
24)
25)

1 **I. ASHTINAI HAS A RIGHT TO CMI'S SATISTAICAL INFORMATION OF**
2 **CMI'S PROMOTED AND TERMINATED EMPLOYEES.**

3
4 The plaintiffs have proved a pattern and practice of discrimination
5 on the basis of race in promotions through the use of statistical
6 evidence and individual instances of racial discrimination. The
7 examination of the promotion practice reveals that it was applied
8 to blacks in an adverse and inequitable manner.

9 **(Lilly v. Harris-Teeter Supermarket 545 F. Supp. 686 Id. at 708)**

10 The hiring evidence, in conjunction with the promotion evidence,
11 can be examined to determine whether discrimination is present.

12 (Cite as: 545 F. Supp. 686, Id. at 709)

13 Also see Fisher v. Procter and Gamble, 613 F.2d 527, 541 (5th Cir. 1980)

14
15
16 Accordingly, Ashtiani is entitled to information of
17 promoted employees before 9/11 and further more, Ashtiani has
18 right to information and list of employees that were laid off
19 and furloughed after 9/11.
20

21
22 It should be noted, that contrary to the impression CMI's
23 counsel, with the generous assistance of Mr. Dixon McKinzie,
24 plaintiff is not requesting system wide Information of 40,000
25 employees of Continental Airlines or 1300 employees in CMI as

1 implied in Declaration of McKenzie as to mislead the Court.
2 Plaintiff is simply asking information within his own technical
3 services division and quality control and quality assurance
4 departments. This involves less than 100 employees.
5
6

7 In Raddatz v. Standard Register Co., 177 FRD 446 (D. Minn.,
8 1997), the court granted plaintiff's motion to compel, in part,
9 allowing plaintiff to obtain age, address, termination, and
10 salary information, contained in management personnel files, for
a reasonable period of time.
11
12

13 Plaintiff's national origin discrimination claim is founded
14 upon disparate impact and disparate treatment discrimination. In
15 order to establish a disparate impact, the plaintiff "must show
16 that a facially neutral employment practice has a 'significantly
17 discriminatory impact upon a protected class.' Sengupta v.
18 Morrison-Knudsen Co. Inc., 804 F.2d 1072, 1076 (9th Cir. 1986).
19 Therefore, in order to prove disparate impact, the use of
20 statistical analysis is necessary. Likewise, a prima facie case
21 of disparate treatment can be established through statistical
22 evidence of discrimination. *Id.*, at 1075.
23
24

25 In order to show disparity in outcome between groups,
statistical data may be admitted, but the data must be

1 sufficiently substantial to raise an inference of causation.

2 Smith v. Xerox Corp., 196 F.3d 358 (9th Cir. 1999).

3

4

5 **II. ASHTIANI HAS RIGHT TO INFORMATION IN REFERENCE TO DATES**

6 **OF DC-10 EXITING CMI FLEETS.**

7

8 Plaintiff asserts that African American employee Ali Mahdi
9 was a good employee on his arrival to Guam and assisted with
10 shortage of manpower, he was treated just like the rest as long
11 as Mahdi could fix CMIs' 22 year old Boeing 727-100 and DC-10
12 leaking jets "keep them flying". These certified aircraft
13 mechanics were asked to transfer from Continental Airlines to
14 help and assist CMI, Mr. Hammer and Mr. Mckinzie have no
15 business and right to bring these mechanics here to Guam on a
16 contract then breach their contract by terminating them after
17 they fixed their leaking jets and when they got their new
18 generation jets CMI looked for a reason to terminate these very
19 same loyal certified mechanics.

20

21 Accordingly, Ashtiani has right to information as the dates
22 DC-10-10 AND DC-10-30 exited the fleets of CMI.

23

24 **III. ASHTIANI IS ENTITLED TO ALL RELEVANT INFORMATION**

25 **RELATING TO CMI'S PROMOTION OF ITS MANAGEMENT.**

1
2 Plaintiff request of P-160 and P-187 of defendant Hammer
3 and defendant Mckinzie is imperative because 1) did Mr. Hammer
4 and Mr. Mckinzie occupy a managerial position when the acts of
5 discrimination took place. 2) We must first examine the extent
6 of their duties and responsibility and most importantly when did
7 that responsibility start these information are relevant because
8 P-160 and P-187 would reveal that minorities were effected the
9 most as result of their promotions. This is necessary to
10 determine whether CMI may be held liable.

11
12 Mr. Mckinzie's and Mr. Hammers' action not limited and
13 exclusive to official capacity and even more liable in their
14 individual capacity.

15
16 Information is relevant to the subject matter of the
17 litigation if it might reasonably assist a party in evaluating
18 the case, preparing for trial, or facilitating settlement. " no
19 longer can the time-honored cry of 'fishing expedition' serve to
20 preclude a party from inquiring into facts underlying opponent's
21 case." Hickman v. Taylor, 329 U.S 495, 506-507, 67 S.C.T. 385,
22 391 (1947).

23
24 Defendant attempts to thwart plaintiff's attempt to seek
25 documents which are relevant and crucial to proving plaintiff's

1 allegations. Defendant seeks to hide documents behind blanket
2 objections of relevance, overbreadth and burdensomeness.
3

4 In Lowe v. Yolo County consol water co . 108 pac. Rptr.

5 297-302. the court held:

7 " It is not disputed of course,
8 that a corporation may be held
9 guilty of malice or oppression by
10 reason of acts of these whom it has
11 placed in charge of its affaires
12 and who 'constitute, to all
13 purposes of dealing with others,
14 the corporation.'"

15 Defendant repeatedly represents that disclosure of certain
16 documents would violate the privacy of the individual employees.
17

18 As clearly shown by **Exhibit A**, CMI has produced documents
19 containing such information. Moreover, plaintiff has no
20 objection to the social security numbers and salaries blacked
21 out. However, the information sought should be provided.
22

23 Defendant does not provide a definition of what may be
24 considered private (except its reference to social security
25 numbers and salaries). It arbitrarily designates certain
documents as private. Without such definition the objection is
meaningless. Finally,

1 The Rules do not differentiate between information that is private or intimate and
2 that to which no privacy interests attach. Under the Rules, the only express
3 limitations are that the information sought is not privileged, and is relevant to the
4 subject matter of the pending action. Thus, the Rules often allow extensive
5 intrusion into the affairs of both litigants and third parties. If a litigant fails to
6 comply with a request for discovery, the court may issue an order directing
7 compliance that is enforceable by the court's contempt powers. (Citing,
8 Wash.Super.Ct.Civil Rule 37(b).)

5
6 Seattle Times Co. v. Rhinehart, 104 S.Ct. 2199, 2206
7 (1984). Clearly, the defendant

8
9 **IV. ASHTIANI'S REQUESTS ARE NOT UNDULY BURDENSONE.**

10
11 CMI claims that Ashtiani's requests are unduly burdensome
12 because they would allegedly cover several hundred pages
13 however, such exaggeration and hand wringing does not comport
14 with the facts. CMI cries that it cannot be put to the
15 unreasonable burden and expense of producing the information
16 requested should be ignored as without foundation. The burden
17 of CMI making copies is indeed nothing comparing to what burden
18 CMI has put plaintiff and his family through.

19
20 **V. ASHTIANIS' REQUEST DO NOT VIOLATE PRIVATE PRIVACY RATHER**
21 **CMI VIOLATES PRIVACY OF ITS' EMPLOYEES.**

22
23 Ashtiani request is not violating private privacy and
24 plaintiff is not asking for Social Security of the employees.
25 defense counsel is "hiding the ball" behind social security

1 numbers defendant could simply black out these numbers and
2 submit the documents.

3

4 Plaintiff is confused as why the production of document
5 number 000194 contains an employees' name, address and map
6 produced by defendant **EXHIBIT A.**

7

8 Defendant is concern about expectation of privacy of its
9 employees to not produce documents while Defendant is the one
10 that violates the privacy of its employees through production of
11 document.

12

13 **VI. DEFENDANT'S OBJECTION ARE MADE IN BAD FAITH AND**

14 **DESIGNED TO FRUSTRATE PLAINTIFF.**

15

16 Defendant seeks to frustrate plaintiff in his pursuit of
17 legitimate discovery. Indeed, the requests are rather modest
18 and very reasonable. A review of cases dealing with similar
19 issues shows that defendants in CMI's position were compelled to
20 discover vast quantities of documents. That is not the case
21 here. Defendant's objections on the basis overbreadth and
22 burdensome-ness are simply frivolous.

23

24 Defendant's assertion of "privacy" is not only frivolous,
25 it is contrary to well established precedent from the Supreme

1 Court. Seattle Times Co. v. Rhinehart, 104 S.Ct. 2199, 2206.
2 Since there is no recognized privilege the privacy objections
3 should be rejected.

4

5 Defendant also asserts that certain documents do not exist.
6 However, it is clear (especially from the vociferous objection
7 on other ground raised by defendant to the same discovery) that
8 the information plaintiff seeks does exist in the records of
9 defendant. For example, see defendant's objections to request
10 No. 13. Defendant, nevertheless, should be compelled to produce
11 the data it has on the subject regardless of its degree of
12 organization. It is not material if a list it neatly organized
13 or is provided as a set of disparate documents containing the
14 information sought.

15

16 As regard to No. 8, it seems hardly believable that
17 defendant has only once (1991) in the seventeen years plaintiff
18 was employed with it, did it conduct an annual evaluation of
19 plaintiff.

20

21 VII. CONCLUSION.

22

23 In Weahkee v. Norton, 621 F2d 1080, 1083 (10th Cir. 1980)

24

25 We said, [W]hen the employer has come
forward with legitimate non discriminatory

1 reasons for the action contested, a
2 plaintiff may rely on statistics to
3 discredit the reasons the employer
4 presented for its action." see Bauer v.
5 Bailar, 647 F2d 1037, 1045 (10th Cir. 1081).

6 CMI alleges that Ashtiani was terminated because he was No
7 call/no show for two consecutive days on Jun 23 and Jun 24 2001
8 as the specific reason for the termination.

9 Mr. Ron Roberts states "I asked Mr. Hammer about Tony
10 Ashtiani who I feel was wrongfully released from the company.
11 Because of two supervisors not communicating with each other. I
12 was told by one supervisor Bill Herrera 'if Glenn would have
13 told me Tony called in all this would not be happening'".

14
EXHIBIT B.

15 Therefore, Glenn Mendoza withheld information because he
16 was named in grievance form whom tampered with attendance
17 records.

18
19 Mr. Ron Roberts on second page of his statement states: Mr.
20 Hammer told me that after the recent event of 9-11 "that Tony
21 Ashtiani would never work around these aircraft again if he
22 could do any thing about it. Because he could not trust people
23 like Mr. Ashtiani." **EXHIBIT C.**

1 Plaintiff notes "if he could do anything about it" broad
2 indeed which includes setting up plaintiff in any thing that he
3 is capable of doing, even during this litigation.

4

5 Based on the Weahkee v. Norton, 621 F2d 1080, 1083 (10th Cir.
6 1980) Plaintiff has established even more by proving that
7 employer in fact concealed information and racial animus in fact
8 came out of Mr. Hammers' mouth.

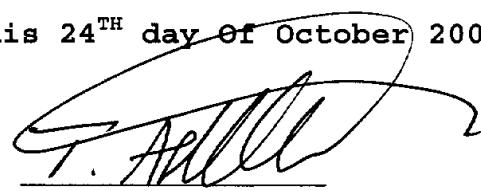
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10 In Fact, if Ashtianis' motion to compel is GRANTED by
11 Honorable Chief Judge of the District Court, It will certainly
12 prove that Continental Airlines Legal Department is involved in
13 legal malpractice of the federal statute as matter of public law
14 and interfering with the investigation of the United States
15 Federal Government. These exhibits were provided in Plaintiffs'
16 Second Amended Complaint in fourth cause of action.

17

18

19 Respectfully submitted, this 24TH day of October 2003.



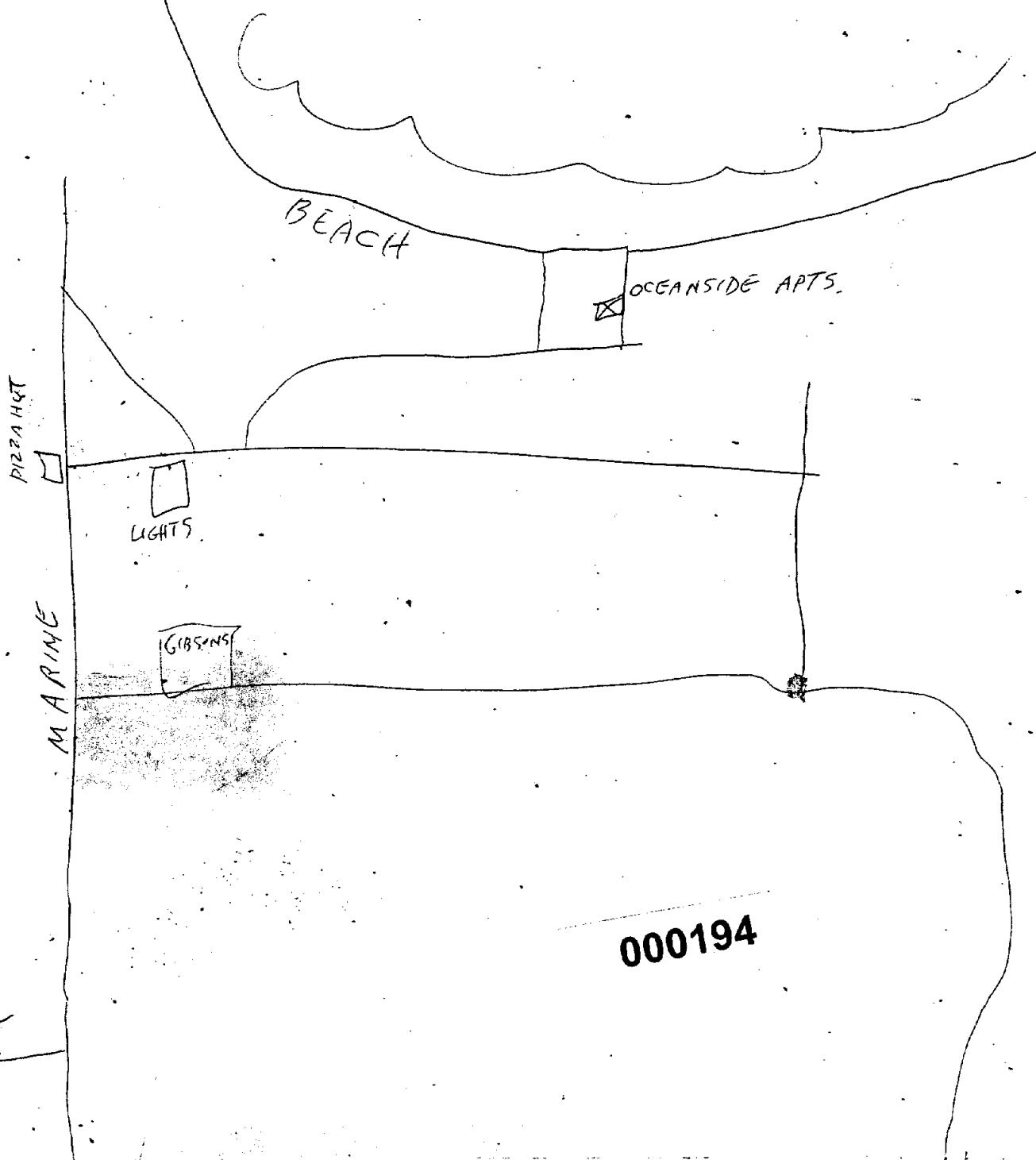
20
21
22
23 Tony H. Ashtiani, Pro Se
24
25

NAME: MAHDI YUSEF ALI TELEPHONE NO. 6467071

OCEANSIDE APT.
ADDRESS: 202D TRANKILO ST. #5, ALUPANG COVE - TAMUNING
(Use house number and street if any)

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Use the rest of the sheet to sketch a map showing how to reach your house! This information is to be used for emergency contact since few of us have telephones.



May 29, 02

During the month of December on or about 11th I Ronald Roberts went to MR. Jim Hammer's office to talk to him about man power. Because of the recent layoff of Aircraft mechanics. When I asked Mr. Hammer about bringing back Mr. Wong (ED). Because we were told, by Mr John Carbajal who took a year leave of absents. John was told by Mr Hammer he was recalling ED Wong. But this was only to keep John happy until he left. MR Hammer had no intentions of bringing anyone back. In fact MR. Hammer had told me we were still 6 people over man power. So I asked Mr Hammer about Tony Costiani who I feel was wrongfully released from the Company. Because of two supervisor's not communicating with each other. I was told by one supervisor Bill Herrera "if Glenn would of told me Tony called in all this would not be happening".

②
Mr Hammer told me that after the recent event of 9-11. That Tony Astiani would never work around these aircraft again if he could do anything about it. Because he could not trust people like Mr. Astiani." End of statement.

Ronald E Roberts
671-6538408